

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTINE ANNE KACIENDA,

Defendant-Appellant.

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UNPUBLISHED

September 20, 2005

No. 254550

Mecosta Circuit Court

LC No. 03-005124-FH

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from her jury trial convictions of possession with intent to deliver less than 50 grams of methamphetamine, MCL 333.7401(2)(b)(i), and maintaining a drug house, MCL 333.7405(1)(d). Defendant was sentenced to concurrent prison terms of thirty-six months to twenty years for the possession with intent to deliver conviction, and sixteen months to twenty-four months for the maintaining a drug house conviction. We affirm.

On appeal, defendant contends that the trial court abused its discretion in denying her motion for a new trial because the verdict was against the great weight of the evidence. Specifically, defendant argues that the quantity of methamphetamine seized from her residence was insufficient to support an inference of intent to deliver, and that an individual cannot be convicted of maintaining a drug house based on the sharing of proscribed drugs with an occasional guest, or keeping the drugs for personal use. We disagree.

We review for an abuse of discretion a trial court's decision to deny a motion for a new trial based on the assertion that the verdict was against the great weight of the evidence. *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998). "An abuse of discretion will be found only where the trial court's denial of the motion was manifestly against the clear weight of the evidence." *Id.* In assessing conflicting evidence, questions of credibility should generally be left to the factfinder. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998).

Intent to deliver "may be proven by circumstantial evidence and also may be inferred from the amount of the controlled substance possessed." *People v Ray*, 191 Mich App 706, 708; 479 NW2d 1 (1991). Expert police testimony in this case established that most methamphetamine users who purchase the drug for personal use buy in quantities of one gram or less. Defendant admitted purchasing more than twenty times that amount. Moreover, defendant had large numbers of plastic baggies of various sizes in her home, some of which were marked

with an eight-ball, which an expert witness testified was a known slang term for the quantity one-eighth of an ounce of a controlled substance. The fact that a scale was located with the plastic baggies also supports a finding of intent to deliver. Taken together, the evidence was sufficient for a jury to infer that defendant intended to deliver the methamphetamine to others. *Ray, supra* at 708-709.<sup>1</sup> Therefore, the trial court did not abuse its discretion in denying defendant's motion for a new trial. *Daoust, supra* at 16.

Defendant was also convicted for maintaining a drug house in violation of MCL 333.7405(1)(d). Subsection 7405(1)(d) provides that a person "[s]hall not knowingly keep or maintain a . . . dwelling . . . that is frequented by persons using controlled substances . . . for the purpose of using controlled substances, or that is used for keeping or selling controlled substances." MCL 333.7405(1)(d). Here, defendant does not challenge the fact that she exercised control over the property, but simply states that the law does not encompass a situation where two people live together and occasionally share drugs between themselves or with a guest. Defendant offers no authority supporting this assertion.<sup>2</sup>

Despite defendant's characterization, there was evidence presented below that the house was frequented by persons for the purpose of illegally using controlled substances. For example, the police seized from the house multiple pipes and a hookah. Moreover, the man who lived with defendant at the residence testified that other people had used illicit drugs in the house. Accordingly, we do not believe that "the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand." *Lemmon, supra* at 627. Therefore, the trial court did not abuse its discretion in denying defendant's motion for a new trial.

Affirmed.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Pat M. Donofrio

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<sup>1</sup> While it is true that defendant presented the jury with an alternative reason for her possession of the baggies and the scale, the jury determined that defendant's version of the events lacked credibility. No reason has been presented to this Court to suggest that the jury's credibility determination should be disturbed on appeal. *Lemmon, supra* at 642-643.

<sup>2</sup> In fact, defendant's assertion contradicts the plain language of the statute, which states that it is illegal to knowingly maintain a dwelling that is used for keeping controlled substances. MCL 333.7405(1)(d).